

EXHIBIT A

GILYASHC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,

v.

15 CR. 706 (VSB)

JOHN ASHE, et al.,

Defendants.

-----x

New York, N.Y.

January 21, 2016

12:15 p.m.

Before:

HON. VERNON S. BRODERICK,

District Judge

APPEARANCES

PREET BHARARA

United States Attorney for the
Southern District of New York

DANIEL RICHENTHAL

RAHUL MUKHI

Assistant United States Attorney

SILLS CUMMIS & GROSS, P.C.

Attorneys for Defendant JOHN W. ASHE

BY: HERVE GOURAIGE

HIRSCHHORN & BIEBER, P.A.

Attorneys for Defendant FRANCIS LORENZO

BY: BRIAN HARRIS BIEBER

BRAFMAN & ASSOCIATES, P.C.

Attorneys for Defendant NG LAP SENG

BY: BENJAMIN BRAFMAN

GILYASHC

1

2

APPEARANCES (CONT'D)

3

4

THE LAW FIRM OF HUGH H. MO, P.C.

Attorneys for Defendant NG LAP SENG

5

BY: HUGH HU MO

6

FEDERAL DEFENDERS OF NEW YORK, INC. (NYC)

Attorneys for Defendant JEFF C. YIN

7

BY: SABRINA P. SHROFF

8

ALSO PRESENT: PATSY ING, INTERPRETER (CANTONESE)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

GILYASHC

1 (Case called)

2 THE COURT: Good afternoon. You may be seated.

3 Mr. Ng, can you hear the interpreter?

4 MR. MO: Apparently there's some audibility issue,
5 your Honor.

6 THE COURT: Let's try and sort that out. How about
7 now, Mr. Ng?

8 MR. BRAFMAN: Your Honor, since there's only one
9 defendant who needs an interpreter, perhaps she can sit next to
10 him.

11 THE INTERPRETER: Your Honor, I just changed the
12 earphones to see if it would cut down on the static.

13 THE COURT: Okay.

14 MR. BRAFMAN: If the defendant would be permitted to
15 sit next to the interpreter over there so that it wouldn't
16 interfere with us.

17 THE COURT: That's fine.

18 MR. MO: Okay.

19 THE COURT: Great. Thank you. If at any point in
20 time, Mr. Ng, there is a problem with the ear set, just raise
21 your hand, and we'll stop the proceeding, and we'll try and
22 deal with that.

23 All right. We're here for a pretrial conference. Let
24 me first hear from the government concerning the status of
25 discovery.

GILYASHC

1 MR. RICHENTHAL: Your Honor, the government has
2 produced to date and, therefore, made available from DupeCoop,
3 which is the principal way we've been doing it as discussed
4 with the Court at the last conference, approximately 3.1
5 terabytes of discovery material.

6 That includes over 1.2 million pages of material and
7 does not include -- that is, the page count does not include --
8 forensic images of electronic devices, of which there are a
9 number, recordings, and other electronic media. So the volume
10 here is quite large.

11 Still to be processed by LTSC, which is our in-house
12 vendor that makes things available to DupeCoop, is
13 approximately 40.4 gigabytes of data. So a substantially
14 smaller amount of data.

15 What that consists principally of are materials
16 received in recent days and weeks, including emails received
17 pursuant to search warrants signed by this Court on
18 December 24, 2014, materials that were received by subpoenas
19 and other legal process, and materials we expect to receive but
20 have not yet received, including those from Customs and Border
21 Protection, specifically statements that Mr. Ng and Mr. Yin may
22 have made when bringing in cash into the United States.

23 This was not in the custody of the prosecution team,
24 but we've asked Customs and Border Protection to provide it to
25 us in an abundance of caution, and our understanding is that

GILYASHC

1 they are working to locate, the memorialization, in any, of
2 those statements. And we will promptly turn that over.

3 We expect that the material yet to produced that I
4 noted, that is, roughly 40 gigabytes or so, will be produced in
5 the coming days or weeks.

6 Specifically within the next four or five days, we
7 expect a substantial set of that material to be available, and
8 we expect the remaining to be available in a couple of weeks.

9 As I think either I or my colleague said last time,
10 this is an ongoing investigation, and we do expect to continue
11 to receive material. Our process when we do that is twofold:
12 First we give it to LTSC, typically the same day.

13 MR. MO: Your Honor, I hate to interrupt. Mr. Ng
14 apparently is having a problem with his earphone.

15 THE COURT: Why don't we have Mr. Ng move next to the
16 interpreter.

17 Mr. Richenthal, I understand you're laying out what
18 discovery still needs to be made. As I understand it, 40
19 gigabytes still need to be made.

20 There are certain statements which may have been made
21 to the Border Protection folks that you've endeavoring to get
22 copies of for Mr. Ing and Mr. Yin. I have not received those.
23 Do you have a sense of timing with regard to those?

24 MR. RICHENTHAL: We really don't unfortunately. It's
25 because they may not in fact have been memorialized. These are

GILYASHC

1 typically just, as I understand it, brief interviews upon
2 arrival from the United States from a foreign country. If one
3 declares more than \$10,000 in cash or otherwise is subject to
4 what's typically known as secondary inspection, the CBP
5 officers may ask a couple of questions.

6 To the extent they're memorialized, we're endeavoring
7 to get that memorialization and to turn it over. To the extent
8 there's not, there's nothing to turn over.

9 Our understanding is CBP is diligently working on
10 this. In fact, they've recently produced a couple
11 memorializations to us in the form of emails. Those have been
12 provided to LTSC to be given to the defense.

13 We're not going to wait for the full set to turn it
14 over. In fact, what I was about to say is that our process for
15 material that we receive on an ongoing basis is essentially
16 twofold:

17 First we turn it over virtually immediately to LTSC,
18 literally often the same day, if possible, so it can be
19 produced to the defense.

20 Second, we update an ongoing index. We've been
21 keeping an index of the nature of the material, the Bates stamp
22 of the material, the date of the material, and whether or not
23 it's designated confidential under this Court's protective
24 order.

25 We provide that index to the defense on an updated

GILYASHC

1 basis fairly frequently, most recently as of yesterday and then
2 again today. And that provides, among other things, dates that
3 we receive from LTSC as to when that material will be
4 available.

5 So as soon as we have material, we add it to the
6 index, and we send it to the defense so that they know what
7 they're getting, even if we can't actually give them the
8 material just yet, and we'll continue to do that.

9 A couple of things on discovery, but let me pause
10 there in case the Court has questions about what I've said so
11 far.

12 THE COURT: I don't. Go ahead.

13 MR. RICHENTHAL: A couple things. First we learned of
14 this this morning from Kaplan. Apparently there may be some
15 sort of error in the Bates numbering. It's a little unclear,
16 the nature of the error.

17 From what Mr. Kaplan has told us, they can see certain
18 Bates numbers on the screen and not others. We're going to try
19 to figure that out as quickly as we can. I don't understand
20 precisely the nature of the error or its cause.

21 I don't think it's an error that's causing the defense
22 not to have material. I think it's a tracking problem, meaning
23 the numbering simply is not adding up.

24 We'll figure that out as quickly as we can. I just
25 wanted to note that we conferred with Kaplan prior to this

GILYASHC

1 afternoon's conference, and we'll get it fixed one way or
2 another.

3 THE COURT: Okay.

4 MR. RICHENTHAL: Second, with respect to certain
5 emails that were found on devices of Defendant Ashe, I want to
6 be specific with the Court as to what's gun on.

7 We've had extensive conversations with Mr. Gouraige
8 about all this and also with other counsel, and I thought it
9 worth putting on the record. So let me start with emails.

10 Mr. Gouraige told us that in his judgment emails
11 between his client and a certain attorney may be privileged at
12 certain periods of time. So what we've done is the following:
13 These emails essentially are in two set so far.

14 Mr. Gouraige has reviewed the first set. He's
15 produced a privilege log to the government. We've reviewed the
16 log. It seemed appropriate.

17 We've released all of the other emails to the defense
18 except a very small number that Mr. Gouraige identified as
19 being purely personal and not relevant which we personally
20 reviewed, and we concurred with that. That's the first set of
21 emails. I think it's some 20,000 or so.

22 The second set of emails -- when I speak of "sets,"
23 I'm simply referring to how it's been produced in discovery.
24 Mr. Gouraige undertook the same process. He's produced a
25 privilege log to us. We've reviewed it.

GILYASHC

1 Except for one entry, we're in agreement. We
2 understand we'll be able to resolve that entry soon, and we can
3 release the rest of the emails to the rest of the defense.

4 It's our understanding that Mr. Gouraige would make
5 the privilege log available to co-counsel upon request as well.
6 It is a very small number of emails.

7 We expect to get a third set of emails with respect to
8 Mr. Ashe, and actually other defendants as well, pursuant to
9 the Court's December 24th search warrant.

10 We don't have those yet. Once we do, we'll hand them
11 over to Mr. Gouraige. This morning he represented to us there
12 may well be privileged emails in there as well. So we expect
13 to undertake the same process.

14 We'll do it as quickly as we can. Mr. Gouraige has
15 been very courteous about doing things promptly and producing
16 things to co-counsel. We have no reason to believe that won't
17 continue. That's the emails.

18 The same issues may exist -- we don't know yet -- with
19 respect to certain devices seized from Mr. Ashe's home. There
20 were a number of electronic devices seized and a number of
21 computers.

22 Mr. Gouraige has identified for us the subset of that
23 larger set that he thinks may contain privileged
24 communications. It's our understanding he's going to endeavor
25 to undertake the same kind of review, looking for

GILYASHC

1 communications, logging them, and we can have a law assistant,
2 if necessary, concur with that and get the rest of the material
3 to the defense.

4 We have produced the subset of devices that
5 Mr. Gouraige has said does not contain any such material to all
6 defense counsel upon request. They haven't all requested it,
7 but it is available to them.

8 The other set we've held back at Mr. Gouraige's
9 request. Our understanding, again, is he will be promptly
10 undertaking that review and, if necessary, with a law assistant
11 U.S. attorney to help, and we'll get that to the rest of the
12 defendants upon request.

13 I just note this for the record. I don't think
14 there's an issue to be discussed. I just want make sure
15 everyone understands why those particular emails and particular
16 devices have been treated differently than others in this case.

17 THE COURT: Let them pause for a second and hear from
18 Mr. Gouraige to confirm that or see if he has anything to add.

19 MR. GOURAIGE: Nothing to add. Everything
20 Mr. Richenthal said is correct.

21 THE COURT: Mr. Richenthal, is there anything
22 additional with regard to discovery?

23 MR. RICHENTHAL: Nothing that I can think of,
24 your Honor.

25 THE COURT: Let me ask this: Where do things stand in

GILYASHC

1 terms of -- I think they're sort of linked -- the issue of
2 Mr. Ashe, the current charges against him, and whether the
3 government intends to supersede to add him in any additional
4 charges?

5 MR. RICHENTHAL: So without commenting in any detail
6 about matters that may be occurring before the grand jury, we
7 will say that we continue to contemplate presenting a proposed
8 superseding indictment. We expect that it would include one or
9 more counts against Mr. Ashe of bribery and/or money laundering
10 and potentially other charges as well.

11 We've had somewhat productive discussions with
12 Mr. Gouraige about that. We are not yet prepared to present
13 that for multiple reasons, but we expect we will be prepared to
14 present it soon. I would anticipate within the next 30 days.

15 THE COURT: With regard to the issue of the other
16 agency -- I assume the Department of State, but I don't know --
17 the issues relating to any potential immunity with regard to
18 Mr. Ashe, at least as far as the government is concerned -- I'm
19 not saying that there won't be a motion at some point, but that
20 it's been resolved such that you believe you can move forward
21 with additional charges.

22 MR. RICHENTHAL: We're proceeding very carefully as
23 the Court knows. As I said on the record on December 10, we do
24 believe that there is not a viable immunity defense to these
25 potential charges, and we expect that they'll likely be

GILYASHC

brought.

We're obviously conferring with the appropriate parts of the United States government about that. As I said, in the next 30 days, we'll be in a position to either present those charges for the grand jury's consideration or to decline to do so.

THE COURT: Putting aside for the moment the charges, potential charges, additional charges against Mr. Ashe, do you anticipate a superseder in any event?

MR. RICHENTHAL: I mean, I think in light of the fact that we've now had two guilty pleas in this case, one of which was by a defendant in the current indictment, and given the nature of the ongoing investigation, I would anticipate a superseder in any event.

I don't think at present, other than with respect to Mr. Ashe, it will materially change kind of the mix of information in the case.

In any event, as I think we told the Court last time, we have not held back any discovery with respect to any defendant on the ground that they're not yet charged or might not be charged with a given offense.

We've turned over everything that we have that we believe falls within Rule 16 or is otherwise discoverable, taking a very broad view. The short answer is we do expect a superseder. The longer answer is I don't think it will

GILYASHC

1 materially change things with other defendants.

2 With that said, obviously the defendants would have a
3 right to direct motions to the face of a superseder. Of
4 course, they reserve that right, and they can't obviously make
5 those motions until they see it.

6 THE COURT: Until it gets filed, yes.

7 Let me hear from the defense: Is there any issue with
8 regard to the government's statement with regard to discovery,
9 anything that you want to bring up? Then I'd like to talk
10 about motions.

11 MR. BIEBER: On behalf of Mr. Lorenzo, Judge, I don't
12 have any issue with anything Mr. Richenthal said about the
13 discovery process.

14 I would just note for the Court's edification, Bates
15 numbers a series of 0s and then 1 all the way through 292023
16 are my client's emails, just to give you the understanding of
17 what we're looking at and to give you a little bit more
18 information, we retained the E discovery company Relativity.

19 All of the information that is loadable, of the
20 million-plus documents, has finally been loaded. It's in a
21 searchable format. My associate is going to assist me in going
22 through the discovery.

23 I don't know if I'm talking out of turn talking about
24 the next status conference, which I discussed it with all
25 codefendants' counsel. I discussed it with counsel for the

GILYASHC

government.

We were thinking out loud two months to come back to you and say, okay. So do you remember what we said in January about loading and all this information? Here is where we're at.

Either we're comfortable asking you to approve this proposed motion schedule or, Judge, I'm sorry. We need a little bit more time because we're going through the documents. That's our thinking on the discovery.

THE COURT: Let me hear if any of the defense counsel have any other views with regard to this.

Mr. Brafman.

MR. BRAFMAN: Just so the record reflects the letters --

THE COURT: I was going to mention that.

MR. BRAFMAN: When we had our last status conference, Defendant Ng asked for a speedy trial. There was some colloquy which suggested that if we were to write on that, it might be viewed as a motion for severance because there were other codefendants.

Upon reflection and after doing some research and talking to some of my colleagues, we withdrew our request for a speedy trial by writing, copied to the government, filed on ECF.

We are not pressing the issue today. What we are

GILYASHC

1 trying to do is trying not to go through a variety of sets of
2 motions as the indictment changes. Hearing that there's going
3 to be a new indictment perhaps within 30 days, I think
4 Mr. Bieber's request that we not set a motion schedule today
5 makes sense because we don't know what motions we're going to
6 be filing until we actually see the charges, if any, that are
7 going to be changed or added or whether there are defendants
8 who are going to be added.

9 So, given the volume of materials, we would like
10 eventually to make the severance motion that I'm thinking about
11 filing when I have as much information as I can get so that I
12 don't have to go through a series of motions. I don't want the
13 first motion to be denied, not because it's substantively
14 inappropriate but because it's premature based on what we hear.

15 I must say that this is not, in my view, the most
16 complicated case that's been tried in this building, although
17 it may set the record for the number of volume of materials
18 that we hear are coming.

19 At some point, we would hope that the Court would
20 allow the government to stand up and say, this is the
21 indictment that we expect to proceed to trial on and that if
22 in fact we uncover any additional materials, that's for a
23 second indictment or gets subsumed as a prior bad act because
24 at some point we do need to actually set a motion schedule and
25 a projected trial date.

GILYASHC

1 THE COURT: I'll say this: I'll do it sort of one
2 step further. At some point I will say, this is the indictment
3 we're going to trial on. Obviously, if the government then
4 supersedes, it's going to be an issue, or they would have to
5 file another indictment.

6 Right now it sounds -- at least there's an
7 agreement -- there is still more material to be produced. The
8 defense is still reviewing the materials so that they can
9 determine exactly what motions they're going to make.

10 The government, hopefully within the next 30 days or
11 so, will either file a superseding indictment or not so that
12 the defense will know sort of what the indictment is they
13 should file motions against.

14 I'll hear -- I have no objection to adjourning the
15 matter, and we'll talk about a date in a moment. But I do
16 expect, when we do come back, to hear if there is a superseder,
17 whether or not something else is imminent, in other words, down
18 the road, so that we can move because I'd like to set a
19 schedule.

20 Again, after hearing from counsel with regard to your
21 having reviewed the materials -- and I agree with you. We
22 should avoid, to the extent possible, having a series of
23 motions. We should have one set of motions, to the extent we
24 can, and then proceed from there.

25 So let me hear and see -- Mr. Brafman, were you done?

GILYASHC

1 MR. BRAFMAN: Yes, sir.

2 THE COURT: Ms. Shroff?

3 MS. SHROFF: Your Honor, it's my policy not to have
4 motion schedule until discovery is complete. When discovery is
5 complete, we can have a motion schedule.

6 THE COURT: In this case it may be larger because
7 there may be dribs and drabs that come in, but certainly things
8 like statements, things like emails, things like search warrant
9 results and applications -- those are things where motions may
10 be made that should be produced.

11 So let's talk about the next conference. I understand
12 the request for several months. I think I'm going to give you
13 a little bit more time, until around the first week of April or
14 so.

15 MR. BIEBER: Judge, if we can just have a moment.

16 THE COURT: Absolutely. Just to give you a sense, the
17 choice was either April 1 or April 8. I hesitate to say
18 April 1 because I'm sure there are some shenanigans that would
19 go on here. So I would prefer April 8.

20 MR. BIEBER: April 8 is fine by the defense, Judge.

21 THE COURT: So we've decided on the next date we're
22 going to come back.

23 MR. RICHENTHAL: What time?

24 THE COURT: April 8 at noon. As I understand it,
25 there is one motion, as I understand it, that probably will be

GILYASHC

1 filed, although it doesn't involve defense counsel. That's the
2 motion on February 22, which I think we're still on schedule
3 for.

4 MR. RICHENTHAL: That's correct, your Honor.

5 THE COURT: We'll come back April 8 at noon.

6 Let me ask: Is there anything else we need to deal
7 with with everyone with the case?

8 MR. RICHENTHAL: Yes, your Honor. In light of the
9 state of discovery, the nature of the case, and defense counsel
10 contemplating potential motions, I would request that time be
11 excluded between today and April 8.

12 THE COURT: I think that's appropriate. Again, I take
13 Mr. Brafman at his word. Probably the charges -- you're
14 right -- aren't particularly complex. However, A, the
15 discovery in the case clearly has a complexity that all of the
16 counsel are dealing with.

17 I think, in order to allow counsel to review the
18 discovery, allow the government to make a decision concerning a
19 superseder, and allow counsel to decide what motions they may
20 want to file, I think the exclusion of time between now and
21 April 8 is in the interests of justice and outweighs the
22 interests of the public and the defendants in a speedy trial.

23 MR. RICHENTHAL: Nothing else on our side, your Honor,
24 with respect to all defendants. Putting aside Defendant
25 Lorenzo's motion for a second, we do want to raise an issue --

GILYASHC

1 we don't think it's a material one -- with respect to Mr. Ng.

2 I don't think the rest of the counsel have to remain,
3 although obviously they're free to if they'd like, but nothing
4 else on our end with respect to the rest of the defendants.

5 THE COURT: How long do you think it will take?

6 MR. RICHENTHAL: I think it's very brief.

7 THE COURT: Have you raised it with your adversary?

8 MR. RICHENTHAL: We have, yes. We just wanted to note
9 that the government learned that Mr. Mo has represented and
10 continues to represent in various capacities the government of
11 China, including arms of the government of China that are
12 connected with the United Nations, such as the People's
13 Republic of China Mission to the United Nations.

14 We advised Mr. Mo that we had learned this. We asked
15 him whether he had conferred with Mr. Ng as to whether this
16 might potentially present a conflict.

17 He advised us in response he had talked with Mr. Ng
18 about this. He had talked to Mr. Brafman about this, who had
19 also spoken to Mr. Ng, and Mr. Ng was comfortable proceeding
20 and did not believe there would be any conflict and, to the
21 extent there was one, was willing to say he was comfortable on
22 the record.

23 We don't think this is a full Curcio matter. We just
24 wanted to let the Court know that we had this back-and-forth
25 with defense counsel, Mr. Mo and Mr. Brafman. We're

GILYASHC

1 comfortable in proceeding. Our understanding is that Mr. Ng
2 was as well. I

3 just wanted to put that on the record and have him say
4 that in case the Court would like to ask him or any counsel any
5 questions.

6 THE COURT: Let me hear from counsel for Mr. Ng.

7 MR. MO: Yes, your Honor. This exchange of
8 communications took place in November of last year regarding
9 potential or actual conflict.

10 My understanding is the government at this point do
11 not believe there is a Curcio hearing required. Regarding the
12 issues of Mr. Ng being comfortable having me be part of his
13 defense team, my position is he has clearly stated he has no
14 issue with any actual potential or any issue of conflict.

15 If your Honor thinks it's necessary, he could
16 certainly be questioned, and then he'll say that he'll waive
17 any issue of conflict.

18 THE COURT: Go ahead, Mr. Brafman.

19 MR. BRAFMAN: Your Honor, I might add that normally if
20 you do a full Curcio hearing, we are provided with the
21 questions in advance, which I think it would be very difficult
22 to do. I don't think it's necessary.

23 We've discussed it extensively through Mr. Mo with
24 Mr. Ng. I don't believe there's a conflict. If a witness came
25 in, the fact that he has two lawyers present -- I've never

GILYASHC

1 represented anybody in these areas so that he could always have
2 me do the questioning if it came to it. So I don't think there
3 is a need, other than a simple question to Mr. Ng.

4 I also state for the record, to the extent that it's a
5 factor, that if Mr. Mo gets qualified, I will nominate myself.

6 THE COURT: We won't hold you to that though,
7 Mr. Brafman.

8 I think I will take counsel's representation at this
9 stage. Obviously, the case is fluid. So that if something
10 comes up, obviously the government should bring it to my
11 attention.

12 It may be that, as Mr. Brafman indicated, that it may
13 be that it would just be a matter where Mr. Brafman could do
14 the examination, if we get to any stages and any motions or at
15 a trial.

16 But I take the representation that, at least at this
17 stage, all counsel believe there doesn't appear to be a
18 conflict. I'll take your representation.

19 If that changes -- I would ask counsel to be cognizant
20 of this issue going forward when you're reviewing documents and
21 the like and also when any information comes to the
22 government's attention concerning potential witnesses so that
23 we can deal with it and have a Curcio, if necessary, as soon as
24 possible, if that's where it ends up. I'll take counsel's
25 representation at this stage. I don't think there's a need to

GILYASHC

1 have a Curcio at this stage about the issue.

2 I think it's on the record that the parties are in
3 agreement, and counsel has indicated that he's communicated
4 with Mr. Ng and that Mr. Ng doesn't, A, believe there's a
5 conflict. To the extent there is some sort of a conflict at
6 this stage -- I'm only saying through today's date -- that he
7 would be amenable to waiving that conflict.

8 Again, that's without a Curcio. Things may come up at
9 a later time. I don't believe there's anything that indicates
10 that a Curcio is necessary from what the government has said.

11 MR. RICHENTHAL: Nothing further from the government,
12 your Honor.

13 THE COURT: Anything from the defense?

14 MR. BIEBER: No, Judge.

15 THE COURT: We'll stand adjourned as far as the whole
16 case is concerned. Then we'll move to oral argument on
17 Mr. Lorenzo's motion.

18 MR. BRAFMAN: Thank you, your Honor.

19 (Adjourned)

20

21

22

23

24

25